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8  
9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**  
11 **WESTERN DISTRICT**

12 **WILLIAM WARDLAW, Treasurer**  
13 **for**  
14 **FEINSTEIN FOR SENATE and**  
15 **FUND FOR THE MAJORITY**  
16 **Committee;**

17 **FEINSTEIN FOR SENATE**  
18 **Committee; and**

19 **FUND FOR THE MAJORITY**  
20 **Committee,**

21 Plaintiffs,

22 vs.

23 **FIRST CALIFORNIA BANK;**

24 **DURKEE & ASSOCIATES, LLC;**

25 **KINDE DURKEE;**

26 **JOHN FORGY;**

27 **MATTHEW LEMCKE;**

28 **AND DOES 1 through 10, inclusive,**

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT:**

1. FRAUD AND DECEIT;
2. CONVERSION;
3. BREACH OF CONTRACT;
4. BREACH OF IMPLIED  
COVENANT OF GOOD  
FAITH AND FAIR DEALING;
5. AIDING AND ABETTING  
FRAUD;
6. AIDING AND ABETTING  
CONVERSION;
7. VIOLATION OF BUSINESS  
AND PROFESSIONS CODE  
§§ 17200 *et seq.*, UNLAWFUL,  
FRAUDULENT AND UNFAIR  
BUSINESS ACTS AND  
PRACTICE;
8. DECLARATORY RELIEF

**JURY TRIAL DEMANDED**

**COMPLAINT**

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1 Plaintiff William Wardlaw, as the Treasurer for Feinstein for Senate and the  
2 Fund for the Majority, Feinstein for Senate Committee, and Fund for the Majority  
3 Committee (hereinafter collectively referred to as "Plaintiffs"), hereby bring this  
4 action for damages and relief against Defendants First California Bank, Durkee &  
5 Associates, LLC, Kinde Durkee, John Forgy, and Matthew Lemcke for violations  
6 of California common law, as well as violations of the California Unfair  
7 Competition Law ("UCL") (Bus. & Prof. Code §§ 17200, *et seq.*). Plaintiffs  
8 complain and allege upon information and belief based, *inter alia*, upon  
9 investigation conducted by Plaintiffs and their counsel, except as to those  
10 allegations pertaining to Plaintiffs personally, which are alleged upon knowledge.  
11 All claims are based upon California state law.

## 12 **I. INTRODUCTION**

13 1. On Friday, September 2, 2011, federal agents arrested Kinde Durkee  
14 ("Durkee") in Burbank, California for mail fraud. Durkee was a long-time  
15 campaign treasurer and financial manager for political campaigns and non-profit  
16 organizations. For over 20 years, Durkee held herself out as a campaign treasurer  
17 and financial manager with significant experience in accountancy, from which she  
18 built legitimacy for herself and her company within the campaign and non-profit  
19 worlds. Durkee had served as the campaign treasurer for dozens of political  
20 campaigns over the years and was well-known and well-respected in political  
21 circles in California.

22 2. Sadly, Durkee and her company betrayed that respect and trust.  
23 According to a federal criminal complaint filed against her by the United States  
24 Attorney General, Durkee has embezzled millions of dollars over the years from  
25 her clients. As described by U.S. Representative Susan Davis of San Diego, it  
26 now appears that Durkee was "the Bernie Madoff of campaign treasurers."

27 3. In the days following her arrest, as Durkee's web of deceit began to  
28 unravel, it soon became apparent that there were a number of victims of Durkee's

1 fraud, including three campaign accounts of United States Senator Dianne  
2 Feinstein, the long-time Senator for California. Senator Feinstein's strong base of  
3 supporters is the result of her dedicated service to Californians and the American  
4 public. The fraud alleged herein constitutes not only the personal betrayal of  
5 Senator Feinstein, but also an unforgivable crime against the public trust and the  
6 millions of California citizens who have long supported Senator Feinstein and  
7 other public officials and non-profits in this State.

8 4. From an office in Burbank, California, Durkee operated and  
9 masterminded a multimillion dollar fraudulent scheme. Her company, Durkee &  
10 Associates ("**D&A**") was a front for the scheme. Durkee and her partner, John  
11 Forgy ("**Forgy**"), as well as her business associate Matthew Lemcke  
12 ("**Lemcke**"), all conspired and agreed to take part in and assist this fraudulent  
13 scheme. A fraudulent scheme of this size and scope took a number of people and  
14 entities to operate.

15 5. The scheme also required the assistance of willing financial  
16 institutions. In this case, **First California Bank** was at the heart of the illegal  
17 transfer of money out of Plaintiffs' accounts. Indeed, First California Bank  
18 recently summed it up best, sending a letter to various accounts customers,  
19 acknowledging that,

20 . . . it appears that Durkee had comingled funds belonging to  
21 various different campaigns and organizations and had made  
22 transfers between accounts on which Durkee had signing  
23 authority.

24 We concluded that there was a very high likelihood that the  
25 balance credited to any given account did not represent  
26 accurately the funds, if any, actually belonging to the campaign  
or organization on the account. In certain circumstances, it is  
apparent that account balances contained funds that had  
previously been credited to non-related accounts. These  
conditions appeared to be pervasive in the Durkee controlled  
accounts.

27 6. Despite knowledge of this pervasive pattern of misconduct, First  
28 California Bank continued to provide banking services to Durkee and Durkee &

1 Associates, LLC for many years, happy to collect the fees and interest generated  
2 by the scores of accounts Durkee maintained at the Bank. Investigation will reveal  
3 other professionals, including attorneys, accountants, and additional banks had  
4 **full knowledge** of the wrongful acts committed by D&A and the individuals.

5 7. For years, Durkee and others took advantage of their positions of trust  
6 they were privileged to hold to secretly siphon off money that was intended to  
7 support causes that are important to the American people. Over the last two years  
8 alone, it is estimated that Durkee and her co-defendants stole millions of dollars  
9 from at least two of Senator Feinstein's campaign committees, Feinstein for Senate  
10 and Fund for the Majority (hereinafter, "the Feinstein Committees"). In the wake  
11 of this massive fraud, investigators are still working to determine the full extent of  
12 the harm inflicted by the defendants on the Feinstein Committees and many other  
13 entities, including numerous non-profit organizations.

14 8. What is clear, is that Durkee and her cohorts – each with the full  
15 knowledge of the other – abused the trust she gained over decades in the political  
16 and non-profit world, in order to steal millions of dollars from innocent Americans  
17 who have supported the lifetime of good works performed by committed  
18 individuals like Senator Feinstein and other public servants and entities. By filing  
19 this Complaint, Plaintiffs seek to obtain justice for all who have contributed  
20 money in support of Senator Feinstein, other elected officials, and the dozens of  
21 non-profits Durkee has defrauded.

## 22 **II. JURISDICTION AND VENUE**

23 9. Defendants, and each of them, are subject to the jurisdiction of this  
24 Court by virtue of their business dealings and transactions in California, by having  
25 caused injuries through their acts and omissions throughout the State of California,  
26 and by their violation of California common law. Defendant Durkee &  
27 Associates, LLC's principal place of business is at 1212 South Victory Boulevard,

28

1 Burbank, California. Defendants Kinde Durkee, John Forgy, and Matthew  
2 Lemcke are all California citizens who reside in the State of California.

3 10. This Court has subject matter jurisdiction over all causes of action  
4 asserted herein pursuant to Article VI, § 10 of the California Constitution. Each  
5 cause of action asserted, including claims alleging violations of California  
6 common law, arise exclusively under the laws of the State of California.

7 11. The damages suffered by Plaintiffs exceed this Court's  
8 jurisdictional minimum.

9 12. Each Defendant has sufficient minimum contacts with California, is a  
10 citizen of California, is registered to conduct business in California, has property  
11 in California, or otherwise purposefully avails itself of benefits from California so  
12 as to render the exercise of jurisdiction over it by the California courts consistent  
13 with traditional notions of fair play and substantial justice.

14 13. Venue is proper because the First California Bank branch at which  
15 the Feinstein Committees' accounts were held, and through which Defendants  
16 operated the scheme, is located in Los Angeles County, in the West Division.  
17 Furthermore, the headquarters of Defendant Durkee & Associates, LLC is located  
18 in Burbank, California, which is located in the County of Los Angeles. The  
19 campaign accounts that the Defendants embezzled monies from were all located in  
20 the County of Los Angeles. The Defendants all reside in or around the County of  
21 Los Angeles. The wrongful acts alleged in this case all occurred in the County of  
22 Los Angeles. Venue is proper in the County of Los Angeles Superior Court.

### 23 **III. THE PARTIES**

#### 24 **A. PLAINTIFFS**

25 14. Plaintiff **William Wardlaw** is a citizen of the state of California and  
26 a resident of the County of Los Angeles.

27  
28 ///

1           15.   **Feinstein for Senate** is a campaign committee registered with the  
2 Federal Elections Committee as a principal campaign committee for the Honorable  
3 Dianne Feinstein.

4           16.   **Fund for the Majority** is a campaign committee registered with the  
5 Federal Elections Committee as a PAC for the Honorable Dianne Feinstein.

6           **B.   DEFENDANTS**

7           17.   Defendant **Durkee & Associates, LLC (“D&A”)** is a California  
8 limited liability corporation with a principal place of business in Burbank,  
9 California. D&A is a business management firm that specializes in political, non-  
10 profit and small business accounting and financial management. D&A was  
11 incorporated as a California LLC on September 22, 2003.

12          18.   Defendant **First California Bank** is a California bank headquartered  
13 in Westlake Village, California and at all times maintained an office in Los  
14 Angeles County. First California Bank is a full-service commercial bank  
15 chartered under the laws of the State of California and is subject to supervision by  
16 the California Department of Financial Institutions. The Federal Deposit  
17 Insurance Corporation insures the Bank's deposits up to the maximum legal limit.  
18 First California Bank is a wholly-owned subsidiary of First California Financial  
19 Group, Inc. (NASDAQ: FCAL).

20          19.   Defendant **Kinde Durkee (“DURKEE”)**, founder and member of  
21 D&A, is a citizen in the State of California and a resident of the County of Los  
22 Angeles.

23          20.   Defendant **John Forgy (“FORGY”)**, a partner at D&A, is a citizen  
24 of the State of California and a resident of the County of Los Angeles.

25          21.   Defendant **Matthew Lemcke (“LEMCKE”)**, Manager of Client  
26 Services at D&A, is a citizen of the State of California and a resident of the  
27 County of Los Angeles. LEMCKE has been employed by D&A since 2001, and  
28



1 was responsible for reviewing client financial reports before submission to upper  
2 management including DURKEE.

3 **C. AGENCY, CONSPIRACY, AND AIDING AND ABETTING**

4 22. At all times relevant to this Complaint, Defendants, and each of them,  
5 were acting as the agents, servants, employees, joint venturers, and/or  
6 representatives of each other, and were acting within the course and scope of their  
7 agency, employment and/or joint venture, with the full knowledge, consent,  
8 permission, authorization and ratification, either express or implied, of each of the  
9 other Defendants in performing the acts alleged in this Complaint.

10 23. Defendants, and each of them, participated as members of a  
11 conspiracy and/or aided and abetted one another in furtherance of the schemes  
12 herein alleged, or assisted one another in carrying out the purpose of the  
13 conspiracy alleged herein, and have performed acts and made statements in  
14 furtherance of the conspiracy in violation of California law. Each of the  
15 Defendants acted both individually and in concert with the other Defendants with  
16 full knowledge of their respective wrongful conduct. As such, the Defendants  
17 conspired together, building upon each other's wrongdoing, in order to accomplish  
18 the acts outlined in this Complaint. Defendants are individually sued as  
19 principals, participants, and/or as aiders and abettors in the wrongful conduct  
20 complained of, and the liability of each arises from the fact that each has engaged  
21 in all or part of the improper acts, plans, schemes, conspiracies, or transactions  
22 complained of herein.

23 **D. UNNAMED PARTICIPANTS**

24 24. Numerous individuals and separate business entities participated  
25 actively during the course of and in furtherance of the wrongdoings alleged, and  
26 many acts were done in the course of, and in furtherance of, the conspiracy with  
27 intent to defraud. The individuals and entities acted pursuant to agreement and in  
28

1 concert with each other. They also acted as agents for principals, in order to  
2 advance the objectives of the conspiracy.

3 **E. DOE DEFENDANTS**

4 25. The true names and capacities, whether individual, corporate,  
5 associate, or otherwise, of Defendants Doe 1 through Doe 5, inclusive, are  
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names  
7 pursuant to Section 474 of the California Code of Civil Procedure. Plaintiff is  
8 informed and believes, and on that basis alleges, that each of said fictitious Doe  
9 Defendants is in some manner responsible for the acts, conduct, and occurrences  
10 alleged herein, as either actual perpetrators or co-conspirators, aiders and abettors,  
11 or primary officers and/or managers with knowledge and control of the  
12 perpetrators' activities. Plaintiffs will seek leave of the Court to amend this  
13 Complaint to allege the true names and capacities of the Doe Defendants when the  
14 same are ascertained, as well as the manner in which each fictitious Defendant is  
15 responsible for the damages sustained by Plaintiff.

16 26. Bank Doe Defendants Doe 6 through Doe 10 are financial institutions  
17 at which DURKEE, D&A, and/or the other named Defendants maintained  
18 accounts into which Plaintiffs' funds were transferred, misappropriated, or co-  
19 mingled, without authorization, or which otherwise knowingly provided  
20 Defendants with substantial assistance in the course of their scheme.

21 **IV. FACTUAL BACKGROUND**

22 **A. KINDE DURKEE & DURKEE & ASSOCIATES WERE**  
23 **TRUSTED AND WELL-REGARDED**

24 27. DURKEE is a veteran campaign treasurer who resides at 3907 Lewis  
25 Avenue in Long Beach, California, a property she owns along with her husband  
26 and business partner, John Forgy. Durkee is also reported to own another property  
27 located at 1212 South Victory Boulevard, in Burbank, California, also with John  
28 Forgy, which is the headquarters of D&A. D&A is also reported as having an

1 additional address at 601 South Glen Oaks Blvd., Suite 211, Burbank, CA 91502,  
2 and owns numerous other properties.

3 28. According to reports, DURKEE began her career in campaign finance  
4 in the 1970s on various campaigns, as a protégé of veteran campaign treasurer  
5 Jules Glazer. Due to the relative dearth of professional campaign treasurers in the  
6 state, DURKEE and D&A quickly garnered a great number of clients, whom they  
7 have maintained over the years, without raising suspicions. As a professional  
8 campaign treasurer, D&A functioned as a banker and accountant, which involved  
9 keeping track of all of the incoming and outgoing funds and following state and  
10 federal guidelines for campaign finance reporting. Professional campaign  
11 treasurers typically have full control of a candidate's political accounts.

12 29. In addition to serving as treasurer for numerous campaign committees  
13 over the years, DURKEE and D&A managed the finances of dozens of non-profit  
14 corporations which include

15 30. Before her arrest, DURKEE, through D&A, had signing authority  
16 over 400 committee and non-profit bank accounts. Since 1972, she has worked  
17 for 5 presidential campaigns and 4 gubernatorial campaigns. In addition,  
18 DURKEE, through D&A, has worked as treasurer for numerous senate,  
19 congressional, state and local candidates. DURKEE and D&A reportedly used  
20 proprietary reporting software to handle mandatory electronic filings to both the  
21 Federal Election Commission and the California Secretary of State.

22 31. It is reported that DURKEE gave no outward sign of lavish spending.  
23 However, investigation now shows that DURKEE has transferred thousands of  
24 dollars to herself and spent the same on others.

25 **B. DURKEE'S WORK FOR THE FEINSTEIN COMMITTEES**

26 32. DURKEE first worked as treasurer for Senator Diane Feinstein in  
27 support of her 1992 campaign for Senate, and has worked on each reelection  
28

1 campaign since. DURKEE was working for Senator Feinstein's campaign  
2 committees at the time of her arrest.

3 33. As treasurer, one of DURKEE and D&A's principal roles was to  
4 ensure that all federal campaign financial disclosures were made timely and  
5 accurately. Over the two decades during which they served Senator Feinstein's  
6 campaigns, DURKEE and D&A never failed to make those disclosures and always  
7 represented that the accounting was accurate.

8 34. Another principal responsibility of DURKEE and D&A was to ensure  
9 that all of the campaigns' expenditures were fully paid. Again, over the two  
10 decades during which they served Senator Feinstein's campaigns, DURKEE and  
11 D&A never failed to cover a requested campaign expenditure. Campaign bills  
12 were always paid on time. As such, there was no indication that the Feinstein  
13 Committees' balances were less than they were supposed to be.

14 35. As an additional safeguard, and as was standard practice, Senator  
15 Feinstein's campaigns required DURKEE and D&A to provide campaign staff  
16 with regular reports that detailed the receipts, expenditures, and balances, of each  
17 of the Feinstein Committees' accounts. These regular reports showed receipts  
18 consistent with internal fundraising records maintained by the Feinstein  
19 Committees independent from DURKEE and D&A. Similarly, the expenditures  
20 reported by DURKEE and D&A were always consistent with the expectations of  
21 the Feinstein Committees' staff.

22 36. Furthermore, the Feinstein Committees' fundraisers had access to  
23 DURKEE and D&A's online database of contributions. The records in that  
24 database reconciled with both the regular campaign reports, and the Committees'  
25 own records.

26 37. Accordingly, until the day of DURKEE's arrest, there was never any  
27 indication that the Feinstein Committee's accounts, or any of the accounts  
28

1 DURKEE has handled for Senator Feinstein's campaigns over the years, have held  
2 less than they were supposed to, or less than what DURKEE and D&A reported.

3 38. DURKEE and D&A's false reporting masked the systematic  
4 embezzlement of the Feinstein Committees' funds. As described in the following  
5 section, DURKEE and D&A used their web of accounts -- primarily held at  
6 Defendant First California Bank -- to siphon away the money; and it is only First  
7 California Bank that had the knowledge to put a stop to the embezzlement.

8 **C. DURKEE'S THEFT FROM THE FEINSTEIN COMMITTEES**

9 39. Over the course of the past year, DURKEE -- with the substantial  
10 assistance of her co-Defendants -- has used the Feinstein Committees' money to  
11 cover her personal and business expenses, and to reimburse other elected officials'  
12 campaign funds from which she had also embezzled. Examples of the scam  
13 include the following:

14 40. On March 10, 2011, DURKEE, through D&A, transferred \$17,000.00  
15 into a D&A account number xxx1251 (First California Bank), from the Feinstein  
16 for Senate Merchant Account, also at First California Bank. This transfer was not  
17 authorized or otherwise necessary or appropriate.

18 41. On May 3, 2011, DURKEE, through D&A, transferred \$6,000 into  
19 D&A account number xxx1251 at First California Bank, from a Feinstein for  
20 Senate Merchant Account, also at First California Bank. On May 27, 2011  
21 DURKEE, through D&A, transferred \$4,000 into D&A account number xxx1251  
22 at First California Bank, from a Fund for the Majority account, also at First  
23 California Bank.

24 42. On May 2, 2011 DURKEE, through D&A, transferred \$6,000 into  
25 D&A account number xxx1251 at First California Bank, from a Feinstein for  
26 Senate Account, also at First California Bank.

27 43. In order to conceal these unauthorized transactions, DURKEE,  
28 through D&A, systematically and intentionally misrepresented the balances and

1 transactions of the Feinstein Committees' accounts in Profit & Loss ("P&L")  
2 statements and account summaries prepared by DURKEE, LEMCKE, and others  
3 at D&A, for Senator Feinstein and her campaign staff.

4 44. In a P&L statement dated May 27, 2011, covering the period May 1,  
5 2011 to May 27, 2011, Defendants represented that the Feinstein for Senate  
6 account had total income of \$118,876.11, and total **expenses of \$34,853.31**. In  
7 actuality, at that time, the account had an ending balance of only \$51,072.15, and  
8 total **expenses of \$193,671.65**. Among those expenses was an unauthorized  
9 **\$35,000** wire transfer to account number xxx1251, a D&A account at First  
10 California Bank.

11 45. In addition, during the same period of time in May 2011, the  
12 following checks totaling **\$124,000**, and all unauthorized, were issued out of the  
13 Plaintiffs' account, on information and belief, under DURKEE's signature:

DATE	CHECK NUMBER	AMOUNT
5/2/11	50304	\$10,000
5/3/11	55008	\$10,000
5/11/11	55009	\$24,000
5/16/11	55010	\$20,000
5/23/11	55011	\$40,000
5/27/11	55012	\$20,000

21 46. Similarly, in a P&L statement dated August 4, 2011, Defendants  
22 represented that on July 30, 2011, the Feinstein for Senate account had a balance  
23 of **\$2,455,076.83**. In a detailed P&L statement for the period covering June 30,  
24 2011 to July 28, 2011, the Defendants represented a total income of \$179,452.33,  
25 and total expenses of \$39,111.32. There was an unauthorized check issued out of  
26 the account in the amount of \$35,000 (check # 55015), on July 18, 2011.

27 47. In actuality, on July 29, 2011, the account had an ending balance of  
28 only **\$356,250.47**, and total expenses of \$177,360.25. Among those expenses

1 were two unauthorized wire transfers of \$30,000 and \$50,000 to account number  
2 xxxxxxxx2092, which is an account not affiliated with Plaintiffs in any way.

3 48. In a Balance Summary dated July 2, 2011, Defendants represented  
4 that the Feinstein for Senate account had a balance of **\$2,312,402.47**. In actuality,  
5 on June 30, 2011, the account had an ending balance of **\$266,424.67**, and total  
6 expenses of \$134,303.22. Among those expenses were the following two checks,  
7 totaling \$75,000, neither of which was authorized:

8 DATE	CHECK NUMBER	AMOUNT
9 6/1/11	55013	\$50,000
10 6/6/11	55014	\$25,000

11 49. In sum, DURKEE appears to have treated Plaintiffs' accounts in the  
12 same way she treated dozens of others, including Assembly members' campaign  
13 accounts, as detailed in the Federal Bureau of Investigation's ("FBI") Criminal  
14 Complaint against DURKEE.

15 50. According to the affidavit of FBI Special Agent Reginald L.  
16 Coleman, DURKEE, through D&A,

17 **transferred money from her clients' bank accounts to her firm's bank**  
18 **accounts without her clients' knowledge or authorization. It also**  
19 **appeared that DURKEE refunded a portion of the misappropriated**  
**money when needed to cover checks or when misappropriations had**  
**been detected.**

20 DURKEE made such unauthorized transactions and misappropriations on a  
21 regular basis, and did not report the transactions on forms required by the  
22 California Secretary of State for campaign funds.

23 51. According to the FBI's investigation, the moneys transferred by  
24 DURKEE from client accounts **"have been used to pay her personal expenses,**  
25 **including mortgage payments and American Express charges, as well as**  
26 **business expenses."**

27  
28 ///

1           52. According to the criminal complaint, DURKEE admitted to the FBI,  
2 **“that she had been misappropriating her clients' money for years and that**  
3 **forms she filed with the state were false.”**

4           53. With respect to Assemblyman Jose Solorio, the criminal complaint  
5 reveals dozens of unauthorized transactions, following a pattern nearly identical to  
6 that seen in Plaintiffs' accounts. For example,

7                   **on approximately October 1, 2010, a cashier's check made**  
8                   **payable to Solorio for Assembly 2010 in the amount of**  
9                   **\$300,000 was deposited into an account for D&A, number**  
10                   **xxxx83658, at City National Bank. . . . The source of the**  
11                   **\$300,000 cashier's check appears from bank records to be**  
12                   **from a money market account in the name of Solorio for**  
13                   **Assembly 2010 held at First California Bank.**

14           54. Within days of the deposit, DURKEE misappropriated much of the  
15 \$300,000 to pay her own expenses, and to cover misappropriations from other  
16 accounts. Specifically, a check signed by DURKEE was issued from the Solorio  
17 money market account for \$125,000, and payable to the Committee to Re-Elect  
18 Loretta Sanchez; and four checks, for \$32,000, \$21,000, \$25,000, and \$15,000,  
19 signed by DURKEE, were issued from the Solorio money market account and  
20 deposited into D&A's business account.

21           55. The \$32,000 check taken from the Solorio money market account was  
22 deposited into a D&A account at First California Bank, account number xxx1251.  
23 From that account, DURKEE issued a check for \$36,000, payable to D&A, and  
24 deposited the funds,

25                   **into a D&A account at First California Bank, account**  
26                   **number xxx0865. From there, \$30,000 was withdrawn in**  
27                   **the form of a check apparently signed by KINDE DURKEE**  
28                   **made payable to D&A and marked for 'payroll.' The**  
                    **\$30,000 check was deposited into First California Bank**  
                    **account number xxx9123.”**

              56. According to the FBI, the \$30,000 was used by DURKEE to make her  
payroll.



1           57. Another of the checks originating from the \$300,000 of  
2 Assemblyman Solorio's funds, for \$25,000, was used by DURKEE to pay credit  
3 card debts. According to the FBI, the \$25,000 check to D&A referenced above  
4 was subsequently deposited into First California Bank, account number xxx0865,  
5 on approximately October 4, 2010, and two withdrawals were made to pay  
6 American Express, one in the amount of \$16,854.76 and another in the amount of  
7 \$679.03. The payment for \$16,854.76 paid for a bill which included charges from  
8 a variety of different entities.

9           58. Another large deposit into the Solorio for Assembly 2010 fund,  
10 during the same time frame, had a similar fate. According to the FBI, on  
11 approximately October 8, 2010, a cashier's check made payable to Solorio for  
12 Assembly 2010 in the amount of \$377,181.24 was deposited into an account for  
13 D&A, number xxxx83658, at City National Bank. The source of the cashier's  
14 check for \$377,181.24 appears to be from a money market account in the name of  
15 Solorio for Assembly 2010 held at First California Bank.

16           59. According to the FBI, a number of checks were issued from the D&A  
17 account, number xxxx83658, into which the \$377,181.24 was deposited: one  
18 check for \$45,000 dated October 7, 2010 and payable to D&A, which was  
19 apparently signed by KINDE DURKEE; a check for \$45,000 dated October 7,  
20 2010 and payable to Committee to Re-Elect Loretta Sanchez; a check for \$60,000  
21 dated October 8, 2010 and payable to Beth Krom for Congress; a check for  
22 \$40,000 dated October 8, 2010 and payable to Susan Davis for Congress; a check  
23 for \$25,000 dated October 11, 2010 and payable to Merchants Account, that was  
24 deposited into D&A account number xxx1251, along with numerous other checks  
25 to unknown accounts.

26           60. The FBI found numerous checks issued into D&A accounts, the funds  
27 from which DURKEE immediately used to cover personal expenses.

1           61. This pattern continued. According to the FBI:

2           **About one week after \$377,181.24 was deposited into the**  
3           **D&A account at City National Bank, number xxxx83658, a**  
4           **check for \$50,000 on the account of Shallman**  
5           **Communications was deposited into that same account. . . .**  
6           **A number of checks or debits were issued from that**  
7           **account: -one check for \$6,000 dated October 13, 2010 and**  
8           **payable to D&A, which was apparently signed by KINDE**  
9           **DURKEE; -a debit for \$50,010 dated October 14, 2010 to**  
10           **purchase an official check (\$10 fee) made payable to the**  
11           **United States Treasury; -a check for \$20,000 dated October**  
12           **14, 2010 and payable to D&A Merchants, which was**  
13           **apparently signed by KINDE DURKEE; and -a check for**  
14           **\$10,000 dated October 14, 2010 and payable to D&A, which**  
15           **was apparently signed by KINDE DURKEE. The check for**  
16           **\$50,000 made payable to the United States Treasury**  
17           **appears to be a tax payment by KINDE DURKEE.**

18           62. DURKEE also used the misappropriated funds to pay the mortgage  
19 on D&A's office. According to the FBI, the \$6,000 check referenced above was  
20 subsequently deposited into account number xxx0865 at First California Bank on  
21 October 13, 2010. Bank records further reveal that a \$5,500 check dated  
22 September 29, 2010 (which cleared on October 13, 2010) and apparently signed  
23 by KINDE DURKEE was issued from that account and was made payable to MDC  
24 Realty Service. KINDE DURKEE had a loan on her business office with MDC  
25 Realty Service. DURKEE admitted during the interview on September 1, 2011  
26 that she paid all of her mortgages on her personal and business property out of her  
27 D&A business accounts.

28           63. DURKEE has admitted using clients' funds for wrongful purposes.  
According to the FBI, DURKEE admitted **"that she used the D&A business**  
**accounts to pay for her daily living expenses, including clothes, food,**  
**entertainment, and mortgages."**

          64. As with Plaintiffs, DURKEE misrepresented the expenditures from,  
and balances in, other entities' accounts. According to the FBI, the state  
disclosure form for Solorio for Assembly 2010 that was signed by KINDE  
DURKEE and filed on October 11, 2010 for the period of time July 1, 2010 to

1 September 30, 2010 reported that there was cash-on-hand in the amount of  
2 \$729,135.56. Bank records for Solorio for Assembly 2010, however, show that  
3 the actual balance as of September 30, 2010 was only \$33,175.81.

4 65. This report was subsequently amended by filings in November 2010,  
5 and in none of the amended reports was there any mention of the checks in the  
6 amount of \$300,000 and \$377,000.

7 66. Based on its investigation, the FBI concluded that KINDE DURKEE  
8 devised a material scheme to defraud Jose Solorio and the Solorio for Assembly  
9 2010 campaign, and obtained money from them by means of materially false and  
10 fraudulent pretenses, representations, and promises.

11 67. As alleged above, DURKEE and her co-Defendants misappropriated  
12 funds from Plaintiffs in the same manner as described by the FBI with respect to  
13 other politicians' and non-profits' accounts.

14 **D. FIRST CALIFORNIA BANK HAD KNOWLEDGE OF**  
15 **DURKEE'S SCHEME AND KNOWINGLY PROVIDED**  
16 **SUBSTANTIAL ASSISTANCE**

17 68. A fraud of the scale alleged herein could not have occurred, and did  
18 not occur, without the knowing involvement of First California Bank. In  
19 exchange for fees and profits, First California Bank intentionally ignored dozens  
20 of red flags, ignored its duties and obligations under state and federal law, and  
21 allowed DURKEE to perpetrate the scheme.

22 **1. First California Bank Intentionally Ignored Multiple Red**  
23 **Flags and Had Knowledge of the Fraud**

24 69. DURKEE and D&A maintained multiple million-dollar plus accounts  
25 with First California Bank, many of them on behalf of well-known political figures  
26 in California. DURKEE and D&A used a single branch of First California Bank  
27 to conduct its fraudulent operations. That branch office was located at 1888  
28

1 Century Park East, Suite. 110 in Los Angeles, California. The manager of that  
2 branch was and is Victor Jimenez, who knew DURKEE and D&A personnel well.

3 70. The staff and managers of that branch knew of DURKEE and D&A's  
4 misconduct, yet allowed it to continue, and assisted in it, because the accounts  
5 DURKEE and D&A handled held millions of dollars and generated thousands of  
6 dollars in transaction and overdraft fees for the Bank. DURKEE ensured the  
7 branch's cooperation by lavishing the bank with profits.

8 71. Motivated by these profits, the Bank ignored its knowledge of  
9 DURKEE and D&A's misconduct, which was evident to the Bank based on basic  
10 industry standards and its duty of care under California law.

11 72. Those basic industry standards are reflected in federal law that  
12 **requires** banks to review accounts and transactions for suspicious circumstances,  
13 and report such suspicious transactions to the Financial Crimes Enforcement  
14 Network. Specifically, 12 CFR 208.62 requires charter banks such as First  
15 California Bank to monitor and report suspicious activity through submission of a  
16 Suspicious Activity Report ("SAR"), any time the bank suspects that it "was used  
17 to facilitate a criminal transaction," or that a transaction "involve[s] potential  
18 money laundering or violations of the Bank Secrecy Act."

19 73. Monitoring and reporting suspicious activity is a critical and routine  
20 function of modern banks, and guidelines for identifying suspicious activity  
21 abound. For example, the Bank Secrecy Act/Anti-Money Laundering  
22 Examination Manual issued by the Federal Financial Institutions Examination  
23 Council publishes a list of "examples of potentially suspicious activities that  
24 should raise red flags for further investigation to determine whether the  
25 transactions or activities reflect illicit activities." First California Bank failed to  
26 adhere to Bank regulations that require an ongoing and regular review of accounts  
27 for suspicious activities that include:

1           74.   **“Funds transfer activity is unexplained, repetitive, or shows**  
2 **unusual patterns.”** As described above, DURKEE regularly made highly  
3 questionable and suspicious fund transfers among the dozens of accounts she  
4 maintained at First California Bank, including frequent transfers out of client  
5 accounts and into D&A’s accounts, and frequent transfers between client accounts  
6 to cover overdrafts.

7           75.   **“Payments or receipts with no apparent links to legitimate**  
8 **contracts, goods, or services are received.”** First Bank of California allowed  
9 DURKEE to make regular payments between client accounts, with only one  
10 apparent – and illegal – reason: to cover overdrafts.

11           76.   **“Funds transfers are sent or received from the same person to or**  
12 **from different accounts.”** As described above, DURKEE made multiple  
13 transfers from client accounts, on the same day, to D&A accounts. For example,  
14 on July 5, 2011, DURKEE made two wire transfers from Feinstein for Senate  
15 account number xxx9311, one for \$30,000, and the other for \$50,000, both to  
16 account xxxxxxxx2092, which is not affiliated with Plaintiffs in any way. Three  
17 weeks after the transfers, on July 28, 2011, DURKEE transferred \$80,000 back  
18 into account xxx9311 from account xxxxxxxx2092. This movement of money  
19 was purely for the purpose of artificially inflating the balance of account  
20 xxxxxxxx2092, and any monitoring by a bank officer would have alerted the Bank  
21 to the transactions’ illegality.

22           77.   **“Unusual transfers of funds occur among related accounts or**  
23 **among accounts that involve the same or related principals.”** As described in  
24 prior paragraphs, DURKEE regularly transferred funds among the various  
25 accounts at First California Bank that she controlled, for no apparent legitimate  
26 reason. As one example, on September 30, 2010, DURKEE deposited a check for  
27 \$36,000 misappropriated from Assemblyman Solorio’s account into a D&A  
28 account at First California Bank, account number xxx0865. The same day,

DURKEE issued a check from account number xxx0865 in the amount of \$30,000, made out to D&A, and deposited that check in yet another First California Bank D&A account, account number xxx9123. There could be no legitimate reason for such transfers, and bank officers knew so.

78. “A customer or group tries to persuade a bank employee not to file required reports or maintain required records. . . . A business or customer asks to be exempted from reporting or recordkeeping requirements.” As discussed in this section, First California Bank failed to follow its own internal guidelines, industry standards, and federal law regarding the monitoring and reporting of suspicious account activity. Whether the Bank did so at the request of DURKEE, or of its own accord, it violated its duties.

79. “Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts.” A vast majority of the withdrawals and checks issued from the Feinstein Committees’ accounts at DURKEE’s request were sent in large, round dollar, thousand dollar amounts, as exemplified in the following chart:

ACCOUNT NO. xxx0607		
DATE	CHECK NUMBER	AMOUNT
08/09/10	10131	\$5,000
08/18/10	10132	\$3,000
08/18/10	20014	\$5,000
09/08/10	10133	\$5,000
10/01/10	10136	\$5,000
10/12/10	10134	\$5,000
10/15/10	10139	\$5,000
10/18/10	10142	\$5,000
10/19/10	10140	\$5,000
10/26/10	10143	\$6,000
11/12/10	20016	\$5,000

1	11/19/10	10144	\$3,000
2	11/30/10	20017	\$5,000
3	12/06/10	20018	\$5,000
4	12/17/10	20019	\$10,000
5	12/31/10	10146	\$3,000
6	1/19/11	10147	\$3,000
7	2/23/11	10149	\$3,000
8	3/14/11	Wire transfer	\$1,000
9	3/23/11	10150	\$3,000
10	3/23/11	21000	\$4,000
11	4/18/11	21001	\$5,000
12	4/22/11	10153	\$3,000
13	5/02/11	21003	\$10,000
14	5/18/11	10156	\$3,000
15	5/27/11	Wire transfer	\$4,000
16	6/01/11	10155	\$5,000
17	6/17/11	10158	\$4,500
18	7/08/11	10162	\$2,000
19	7/07/11	10166	\$2,000
20	7/08/11	10164	\$2,000
21	7/11/11	10165	\$2,000
22	7/14/11	10160	\$2,000
23	7/19/11	10159	\$2,000
24	7/19/11	10163	\$2,000
25	7/28/11	10161	\$2,000
26	8/17/11	21002	\$25,000
27	8/30/11	10169	\$9,000

**ACCOUNT NO. xxx7787**

DATE	CHECK NUMBER	AMOUNT
12/08/10	1001	\$25,000
12/09/10	1002	\$10,000

**COMPLAINT**

1	12/17/10	1003	\$10,000
2	2/10/11	1004	\$25,000
3	2/22/11	1005	\$10,000
4	2/28/11	1006	\$3,000
5	2/28/11	1007	\$15,000
6	3/10/11	Wire transfer	\$17,000
7	3/14/11	Wire transfer	\$6,000
8	3/21/11	1008	\$4,000
9	3/28/11	1010	\$18,000
10	3/30/11	1009	\$11,000
11	4/06/11	5102	\$14,000
12	4/18/11	5103	\$5,000
13	4/26/11	5104	\$5,000
14	4/27/11	5105	\$10,000
15	5/2/11	5106	\$10,000
16	5/3/11	Wire transfer	\$6,000
17	5/3/11	5107	\$5,000
18	5/11/11	5108	\$12,000
19	5/23/11	5109	\$10,000
20	8/2/11	Wire transfer	\$100,000

21	<b>ACCOUNT NUMBER xxx9311</b>		
22	<b>DATE</b>	<b>CHECK NUMBER</b>	<b>AMOUNT</b>
23	08/09/10	30963	\$10,000
24	08/09/10	30964	\$10,000
25	08/09/10	30965	\$10,000
26	08/10/10	30966	\$12,000
27	08/12/10	30967	\$10,000
28	08/13/10	30968	\$20,000
29	08/18/10	30969	\$5,000
30	08/18/10	10947	\$3,000
31	08/20/10	10941	\$1,000



1	08/30/10	30970	\$10,000
2	09/07/10	30971	\$8,000
3	09/20/10	20959	\$20,000
4	09/23/10	10954	\$100,000
5	09/27/10	30972	\$14,000
6	09/29/10	20954	\$25,000
7	10/08/10	20955	\$40,000
8	10/08/10	20956	\$4,000
9	10/15/10	10959	\$10,000
10	10/18/10	10960	\$3,000
11	10/25/10	20957	\$20,000
12	11/04/10	20958	\$15,000
13	11/08/10	20960	\$8,000
14	11/09/10	20961	\$10,000
15	11/12/10	20963	\$5,000
16	11/16/10	10961	\$2,600
17	11/19/10	10964	\$3,000
18	11/22/10	20964	\$10,000
19	11/23/10	20965	\$20,000
20	11/30/10	20966	\$5,000
21	12/03/10	20967	\$40,000
22	12/09/10	20968	\$5,000
23	12/17/10	20969	\$15,000
24	12/23/10	20970	\$13,000
25	12/28/10	10965	\$3,200
26	12/31/10	10969	\$3,000
27	02/01/11	20971	\$24,000
28	02/17/11	50285	\$10,000
	02/22/11	50286	\$10,000
	02/23/11	50287	\$13,000
	02/23/11	10977	\$3,000

02/24/11	50288	\$10,000
03/02/11	Wire transfer	\$18,000
03/10/11	Wire transfer	\$50,000
03/14/11	Wire transfer	\$6,000
03/14/11	50289	\$6,000
03/21/11	50290	\$27,000
03/23/11	10980	\$3,000
03/24/11	50292	\$25,000
03/28/11	50294	\$10,000
03/30/11	50295	\$2,000
03/31/11	50296	\$5,000
04/06/11	50291	\$25,000
04/06/11	50291	\$25,000
04/07/11	10997	\$27,500

80. **“Suspicious movements of funds occur from one bank to another, and then funds are moved back to the first bank.”** DURKEE frequently moved the same funds between First California Bank and City National Bank. For example, the criminal complaint against DURKEE describes an unauthorized transfer of \$300,000 from Assemblyman Solorio’s account at First California Bank, to a D&A account at City National Bank. Within days of that transfer, most of the \$300,000 **was transferred back to various other of DURKEE’s accounts** at First California Bank. A similar pattern occurred with subsequent misappropriation of a \$377,181 check.

- **Repeatedly overdrawing accounts and “bouncing” checks.** One of the most obvious red flags was DURKEE’s repeated overdrawing of accounts. Over the course of one year alone, on the Feinstein Committees’ accounts, DURKEE overdrew the accounts, incurring overdraw fees, on **68** occasions. This alone would require an internal review of the activity. First California routinely covered these checks by simply charging the account a “NSF-OD Charge”. This

1 frequent overdrafting was blatant and obvious, as exemplified by the following  
2 excerpt from one of Plaintiffs' monthly statements:

3  
4 FEINSTEIN FOR SENATE

PAGE 2

5 ACCOUNT [REDACTED] 9311

6  
7  
8  
9 WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
04/20/11	NSF-OD CHARGE CHECK #0000010998	35.00
04/20/11	NSF-OD CHARGE CHECK #0000010996	35.00
04/22/11	NSF-OD CHARGE CHECK #0000050302	35.00
04/22/11	NSF-OD CHARGE CHECK #0000011003	35.00

10  
11  
12  
13 • **Suspicious intercompany transfers.** As detailed above, DURKEE  
14 frequently transferred round sums of money between D&A accounts at First  
15 California Bank. All banks review accounts for such intercompany transfers.

16 • **Checks where the signor and payee are the same.** DURKEE  
17 signed scores of checks payable to D&A. This is considered by Bank Examiners  
18 to be one of the prime indications of fraud.

19 • **Funds stay in accounts for only a very short time.** Often the very  
20 same day funds were deposited into client accounts – and even in anticipation of  
21 such deposits – DURKEE depleted those funds through checks and transfers to the  
22 accounts of D&A and other clients.

23 • **Check kiting (using circular payments among a web of accounts**  
24 **to cover payments made on overdrawn accounts, masking insufficient funds).**  
25 DURKEE so thoroughly and rapidly depleted her clients' funds that she constantly  
26 had to shuffle money between accounts in order to prevent checks from bouncing.  
27 For example, as described above, on July 5, 2011, DURKEE made two wire  
28 transfers from Feinstein for Senate account number xxx9311, one for \$30,000, and

1 the other for \$50,000, both to account xxxxxxxx2092, which is not affiliated with  
2 Plaintiffs in any way. Three weeks after the transfers, on July 28, 2011, DURKEE  
3 transferred \$80,000 back into account xxx9311 from account xxxxxxxx2092.  
4 Similarly, on August 31, 2011, DURKEE transferred \$100,000 out of Feinstein for  
5 Senate account number xxx7787 and into unaffiliated account number  
6 xxxxxxxx8333. The **very same day**, DURKEE transferred the \$100,000 back into  
7 the Feinstein for Senate account number xxx7787 from account number  
8 xxxxxxxx8333.

9                   **2.     First California Bank Violated Office of Controller**  
10                   **Guidelines For Check-Kiting Detection**

11           81.   The Office of the Controller of the Currency (“OCC”) publishes  
12 detailed guidelines to assist banks in detecting check kiting schemes such as this.  
13 According to the OCC, examples of suspicious circumstances which may indicate  
14 a check-kiting scheme include:

- 15           •       **“Several accounts with similar names, owned or controlled by the**  
16 **same individuals.”** As detailed above, DURKEE controlled dozens of accounts  
17 held at First California Bank.
- 18           •       **“Regular or excessive drawings against uncollected funds.”** As  
19 described above, DURKEE regularly drew on funds that were deposited the same  
20 day, or not yet even deposited.
- 21           •       **“Frequent daily negative ending balances or overdrafts that**  
22 **eventually clear or are covered in a short time frame.”** DURKEE incurred  
23 overdraft fees on **68** items drawn on the three Feinstein Committee accounts in just  
24 one year. Notably, First California Bank does not appear to have prevented her  
25 from doing so even once during that time. It is standard banking practice for  
26 branch managers to review all overdrafts on the branch’s accounts **on at least a**  
27 **daily basis.** Accordingly, First California Bank knew of this pattern of overdrafts,  
28 yet allowed DURKEE to continue overdrawing accounts, unabated.

1           •       **“Identifiable patterns of transactions such as deposits, transfers**  
2 **between accounts, withdrawals, and wire transfers, often with similar or**  
3 **increasing amounts.”** As illustrated in the charts above, DURKEE regularly  
4 withdrew round thousand dollar amounts from the Feinstein Committee accounts.

5           •       **“Frequent, large deposits drawn on the same institution.”** Again,  
6 DURKEE shuffled money between her accounts in large, round thousand dollar  
7 amounts.

8           •       **“Deposits drawn on other institutions by the same maker or**  
9 **signer.”** As described above, DURKEE transferred funds between City National  
10 Bank and First California Bank on a regular basis.

11          •       **“Large debits and credits of even dollar amounts.”** This was done  
12 on a regular basis as detailed above.

13          •       **“Frequent check withdrawals to the same institution, with the**  
14 **maker listed as payee.”** DURKEE frequently signed checks to D&A, and  
15 deposited those checks in D&A accounts held at First California Bank.

16          •       **“A low average daily balance in relation to deposit activity.”**  
17 Despite receiving regular deposits from donors to the Feinstein Committees, the  
18 Feinstein Committee accounts simply never grew, as DURKEE constantly tapped  
19 them for her own wrongful use.

20           82.    In sum, there were dozens of transactional improprieties, every  
21 month, done with the FULL KNOWLEDGE of First California Bank. Yet, as  
22 described in the following section, First California Bank failed to report DURKEE  
23 or shut down her accounts. Instead, First California continued to actively provide  
24 banking assistance to DURKEE and D&A as they raided their clients’ coffers, all  
25 in the name of profit and greed.

26

27

28    ///

1                   3.     **First California Bank Violated Federal Financial**  
2                             **Institutions Examination Council's Guidelines by**  
3                             **Intentionally Failing to Report DURKEE or Halt Her**  
4                             **Activities**

5             83.     Had First California Bank complied with its duties under California  
6 law, as mirrored in federal law (12 CFR 208.62), and the guidelines described in  
7 the foregoing, it would have monitored and reported DURKEE and D&A's  
8 wrongful activities, and would have ceased providing assistance to DURKEE and  
9 D&A in furtherance of their scheme.

10            84.     Such monitoring and reporting of suspicious financial transactions,  
11 especially in the post-September 11 era, is an important and routine part of modern  
12 banking. Banks are even shielded from liability for reporting. Specifically, 31  
13 U.S.C. section 5318(g)(3) provides complete immunity from any claims under  
14 state or federal law for reporting, stating, in pertinent part, that anyone reporting  
15 suspicious activity "shall not be liable to any person under any law or regulation of  
16 the United States, any constitution, law, or regulation of any State or political  
17 subdivision of any State, or under any contract or other legally enforceable  
18 agreement (including any arbitration agreement), for such disclosure or for any  
19 failure to provide notice of such disclosure to the person who is the subject of such  
20 disclosure or any other person identified in the disclosure."

21            85.     Simply stated, First California Bank had no legitimate reason not to  
22 report DURKEE and D&A's activities, except for the continued profit to the Bank.

23            86.     Moreover, reporting is simple. The federal **SAR** form (FinCEN Form  
24 109), even provides straightforward instructions, including a section entitled  
25 "When To File A Report," and can be filed electronically. (*See Exhibit A*). The  
26 SAR reports provide the federal Financial Crimes Enforcement Network  
27 ("FinCEN") with critical and detailed information. For example, the SAR form  
28

1 provides the following guidance for completing the "Narrative" portion of the  
2 form:

- 3 • "Describe conduct that raised suspicion.
- 4 • "Explain whether the transaction(s) was completed or only attempted.
- 5 • "Describe supporting documentation and retain such documentation  
6 for your file for five years.
- 7 • "Indicate a time period, if it was a factor in the suspicious  
8 transaction(s). . . .
- 9 • "Retain any admission or explanation of the transaction(s) provided  
10 by the subject(s) or other persons. Indicate when and to whom it was given.
- 11 • "Retain any evidence of cover-up or evidence of an attempt to  
12 deceive federal or state examiners, or others.
- 13 • "Indicate where the possible violation of law(s) took place (e.g., main  
14 office, branch, agent location, etc.).
- 15 • "Indicate whether the suspicious activity is an isolated incident or  
16 relates to another transaction. . . .
- 17 • "Indicate any additional account number(s), and any foreign bank(s)  
18 account numbers which may be involved in transfer of money.
- 19 • "Identify any employee or other individual or entity (e.g., agent)  
20 suspected of improper involvement in the transaction(s).

21 (Exhibit A).

22 87. Had First California Bank accurately completed and submitted **SARs**  
23 in connection with some or all of DURKEE and D&A's suspicious transactions,  
24 the scheme would have been stopped in its tracks.

25 88. Even absent suspicious activities, banks are required to complete a  
26 Currency Transaction Report ("**CTR**") for submission to FinCEN for **any**  
27 transaction over \$10,000.

1                   **4.     First California Failed to Follow Its Own Internal**  
2                               **Operations Manuals and Shielded DURKEE's Activities**  
3                               **from the California Department of Financial Institutions**

4           89.     In order to ensure compliance with state and federal law, First  
5 California maintains internal operations manuals that provide additional guidance  
6 to managers and branch staff regarding suspicious transactions. Standard industry  
7 practices dictate that banks have four types of programs in place, known in the  
8 industry as the “four pillars,” to prevent fraud. Those four pillars are: (a) internal  
9 controls to ensure ongoing compliance; (b) independent testing of compliance; ©  
10 designation of an personnel responsible for compliance; and (d) training on  
11 potentially fraudulent transactions and money laundering activities. The  
12 requirements for these pillars have grown increasingly demanding over the past  
13 decade, particularly as they relate to recognition of suspicious transactions.

14           90.     The Bank Secrecy Act requires banks to adopt internal written  
15 policies to monitor and ensure compliance with the Act. The OCC further  
16 recommends that the following internal controls be implemented to detect and  
17 prevent fraud:

- 18           •       “Officer approval on drawings against uncollected funds, overdrafts,  
19 and wire transfers. Such authority should be strictly enforced and not exceed an  
20 individual’s lending authority.
- 21           •       “Daily reports on drawings against uncollected funds, overdrafts,  
22 large items, and significant balance changes.
- 23           •       “Designated individual to regularly review internal reports to spot  
24 anomalous conduct and to ensure proper investigation when warranted.
- 25           •       “Secondary level of administrative control that is distinct from other  
26 lending functions to promote objectivity when granting significant drawings  
27 against uncollected funds or overdrafts.



1           •       “Regular overdraft activity reports to the board or an approved  
2 committee thereof.

3           •       “Periodic review through an independent audit function to assess and  
4 report on the adequacy of all established internal controls in this area.”

5           91.     According to First California Bank’s latest annual filing with the  
6 SEC, it maintains internal controls to protect against fraud. Specifically, the Bank  
7 told the SEC and Bank Examiners:

8                     We are subject to certain operational risks, including, but not  
9                     limited to, data processing system failures and errors, **customer**  
10                    **or employee fraud**, security breaches of our computer systems  
11                    and catastrophic failures resulting from terrorist acts or natural  
12                    disasters. **We maintain a system of internal controls to**  
13                    **mitigate against such occurrences** and maintain insurance  
                      coverage for such risks that are insurable, but should such an  
                      event occur that is not prevented or detected by our internal  
                      controls and uninsured or in excess of applicable insurance  
                      limits, it could have a significant adverse impact on our  
                      business, financial condition or results of operations.

14           92.     The transfers and activities undertaken by DURKEE and her  
15 associates with the Feinstein Committees’ accounts at First California Bank had  
16 many of the features that should have triggered such internal controls, and SAR  
17 and CTR reporting, yet First California Bank never reported DURKEE and D&A’s  
18 transactions. First California Bank **knowingly ignored and violated its own**  
19 **internal policies**, and federal law, that allowed DURKEE and D&A to engage in  
20 the highly suspicious and improper transactions described above. First California  
21 Bank had the duty and ability to terminate its assistance of DURKEE and D&A’s  
22 fraud, and to terminate DURKEE and D&A’s accounts.

23           93.     Moreover, First California Bank failed to report DURKEE and  
24 D&A’s activities to the California Department of Financial Institutions. First  
25 California Bank also concealed DURKEE and D&A’s activities, and the dozens of  
26 red flags raised by those activities, from the annual examinations of the Bank  
27 conducted by the Department of Financial Institutions pursuant to Section 1900 of  
28 the California Financial Code.

1                   **5.     First California Violated Its Own Terms and Conditions for**  
2                   **Business Accounts**

3           94.     First California Bank's standard terms and conditions for business  
4 accounts includes an explicit provision requiring First California Bank to close an  
5 account that is being used for fraud or other suspicious activity. The terms and  
6 conditions state:

7                   **ACCOUNT TERMINATION.** You and we agree that either  
8 of us may close your Account and terminate this Agreement at  
9 any time with or without cause. We will provide written notice  
10 to you in advance if we decide to terminate your Account  
11 relationship for any reason other than abuse of the account  
12 relationship or to prevent a loss. . . . Further, for security  
13 reasons, we may require you to close your Account and to open  
14 a new account if: there is a change in authorized signers;  
15 **there has been a forgery or fraud reported or committed**  
16 **involving your Account;** any Account checks are lost or  
17 stolen; **you have too many transfers from your Account; or,**  
18 **any other provision of our Agreement with you is violated.**  
19 After the Account is closed, we have no obligation to accept  
20 deposits or pay any outstanding checks. You agree to hold us  
21 harmless for refusing to honor any check drawn on a closed  
22 account. In the event that we close your Account, we may mail  
23 you a Cashier's Check for the applicable remaining Account  
24 balance. The termination of this Agreement and closing of an  
25 account will not release you from any fees or other obligations  
26 incurred prior to the date upon which this Agreement is  
27 terminated and an account is closed, any fees assessed by us in  
28 the process of closing an account, or from your responsibility  
to maintain sufficient funds in an account to cover any  
outstanding checks or other debit items.

.....

20                   **MISCELLANEOUS PROVISIONS.** If you or your Account  
21 becomes involved in any legal proceedings, your use of the  
22 Account may be restricted. **You agree not to use the Account**  
23 **in any illegal activity.**

23           95.     First California Bank knew that DURKEE and D&A were regularly  
24 and improperly siphoning money from client accounts to pay for personal and  
25 business expenses, and engaging in check kiting and other account manipulations  
26 in order to shield their embezzlement. As described above, these were not isolated  
27 incidents. DURKEE and D&A engaged in the same conduct with respect to  
28

1 dozens of accounts, over several years. First California Bank knew that DURKEE  
2 and D&A were defrauding dozens of clients, including Plaintiffs.

3 96. First California Bank allowed this conduct to continue because the  
4 accounts DURKEE and D&A controlled were a significant generator of fees for  
5 First California Bank, and provided funds that First California Bank could invest  
6 at a profit for as long as the funds sat in the accounts.

7 97. Despite its knowledge of the fraud, First California Bank provided  
8 substantial assistance to DURKEE and D&A in furtherance of their scheme to  
9 defraud and steal from Plaintiffs, other public officials, and non-profits across  
10 California. First California Bank failed to comply with any of its responsibilities  
11 or obligations with respect to the Feinstein Committees' accounts. Rather, First  
12 California Bank was at the center of DURKEE's fraudulent scheme, and far from  
13 shutting down the scheme or halting its own involvement in that scheme, it  
14 facilitated the scheme by providing DURKEE and D&A with extraordinary access  
15 to its employees, infrastructure and banking services.

16 98. First California Bank's assistance allowed DURKEE and D&A to  
17 steal millions of dollars from their clients, including Plaintiffs, other elected  
18 officials, and non-profits across California and the country. In another example of  
19 First California Bank's knowing facilitation of the embezzlement, the Bank  
20 reportedly allowed DURKEE to electronically transfer funds in and out of a non-  
21 profit organization's account despite the fact that DURKEE **did not have**  
22 **signature authority on the account**. Without the knowing cooperation of Bank  
23 management, DURKEE could not have done so.

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1           E.    FIRST CALIFORNIA BANK ACKNOWLEDGES THAT  
2                    DURKEE MISAPPROPRIATED AND CO-MINGLED FUNDS,  
3                    YET REFUSES TO GIVE DURKEE CLIENTS ACCESS TO  
4                    THEIR OWN FUNDS

5           99.    Just days after DURKEE's arrest, First California Bank sent Plaintiffs  
6 a letter acknowledging that it had allowed DURKEE to misappropriate and co-  
7 mingle client funds. The letter states, in pertinent part: "the account balances  
8 shown on [the Bank's] records . . . . may include funds belonging to other clients  
9 of Durkee which were comingled by Durkee with your funds."

10          100.  Despite this acknowledgment, the Bank refused to provide Plaintiffs  
11 with what little remained of their funds unless Plaintiffs agreed to fully indemnify  
12 the Bank. Simply put, the Bank is holding Plaintiffs' funds hostage.

13          101.  In a subsequent letter, dated September 16, 2011, First California  
14 Bank again acknowledged that it had allowed DURKEE to shuffle money between  
15 the accounts to such an extreme degree that the proper balance of the accounts  
16 simply cannot be determined. Specifically, it stated:

17                   The more we investigated the situation, the more it  
18 appears that Durkee had comingled funds belonging to various  
19 different campaigns and organizations and had made transfers  
between accounts on which Durkee had signing authority.

20                   **We concluded that there was a very high likelihood**  
21 **that the balance credited to any given account did not**  
22 **represent accurately the funds, if any, actually belonging to**  
23 **the campaign or organization on the account. In certain**  
24 **circumstances, it is apparent that account balances**  
25 **contained funds that had previously been credited to non-**  
26 **related accounts. THESE CONDITIONS APPEARED TO**  
27 **BE PERVASIVE IN THE DURKEE-CONTROLLED**  
28 **ACCOUNTS**

(Exhibit B).

102. These "pervasive" conditions are precisely the type that led the Bank  
to know of DURKEE's scheme years ago.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FRAUD AND DECEIT**

4 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**  
5 **and DOES 1-10)**

6 103. Plaintiffs incorporate by reference all of the previous allegations as  
7 though fully set forth herein.

8 104. As alleged herein, Defendants DURKEE, D&A, FORGY, LEMCKE,  
9 and DOES 1-50 provided Plaintiffs with fraudulent account summaries and profit  
10 and loss statements, on a weekly or monthly basis, from at least August 2010 to  
11 August 2011. Those fraudulent reports and statements misrepresented the amount  
12 of withdrawals from the accounts and the account balances. The reports and  
13 statements failed to disclose the unauthorized withdrawals from the accounts made  
14 by Defendants to cover their own personal and business expenses, and to  
15 reimburse other campaign funds for embezzled funds.

16 105. The wrongful acts and omissions on the part of Defendants, as herein  
17 alleged, were made with the intent to induce Plaintiffs, and each of them, to  
18 continue to utilize Defendants' services and entrust Defendants with campaign  
19 contributions and other funds.

20 106. At all times alleged, Plaintiffs were ignorant of Defendants'  
21 fraudulent intentions and, in the exercise of reasonable diligence, did not discover  
22 or uncover their wrongdoing because Defendants, and each of them, intentionally  
23 misreported the available balances, income, and expenses in weekly and monthly  
24 statements. Furthermore, on information and belief, Defendants misappropriated  
25 funds from other clients' funds when necessary to cover legitimate expenses that  
26 needed to be paid from Plaintiffs' accounts.

27  
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1        107. As a direct and legal result of said fraud, deceit, and/or concealment  
2 on the part of Defendants, and each of them, Plaintiffs have been damaged in an  
3 amount exceeding the jurisdictional minimum, according to proof.

4        108. The above-described fraud, deceit, and/or concealment on the part of  
5 Defendants, and each of them, was intended to and did deprive Plaintiffs, and each  
6 of them, of millions of dollars. These acts were accomplished by Defendants by  
7 means of fraud, deceit, concealment, oppression, and/or malice and, as such,  
8 warrant the imposition of exemplary and/or punitive damages as against  
9 Defendants, and each of them.

10        109. WHEREFORE, Plaintiffs, and each of them, pray for judgment  
11 against Defendants, and each of them, as set forth herein.

12                                **SECOND CAUSE OF ACTION**

13                                **CONVERSION**

14                                **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**  
15                                **and DOES 1-10)**

16        110. Plaintiffs incorporate by reference all the allegations contained in the  
17 Complaint as though fully set forth herein.

18        111. At all times alleged, Plaintiffs were the owners of the funds  
19 maintained in the subject accounts, or had the right to possession of the funds that  
20 were maintained in the accounts.

21        112. At all times alleged, Defendants DURKEE, D&A, FORGY,  
22 LEMCKE, and DOES 1-50, and each of them, wrongly drew on Plaintiffs' funds  
23 without authorization and without permission for their own personal and wrongful  
24 use. Defendants, and each of them, were direct beneficiaries of the conversion as  
25 they obtained financial benefits including, but not limited to, the payment of  
26 personal and business debts and liabilities.

27  
28        ///

1 113. As a legal result of the conversion by Defendants, Plaintiffs, and each  
2 of them, suffered damages including, but not limited to, the amount of money  
3 converted, as well as the time and money expended to recovery said wrongfully  
4 converted funds including, but not limited to, attorneys' fees and costs.

5 114. Punitive damages should also be awarded pursuant to Civil Code  
6 section 3294 as the conduct of Defendants, and each of them, was malicious,  
7 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

8 115. WHEREFORE, the Plaintiffs, and each of them, pray for judgment  
9 against Defendants, as set forth herein.

10 **THIRD CAUSE OF ACTION**

11 **BREACH OF CONTRACT**

12 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**  
13 **and DOES 1-5)**

14 116. Plaintiffs incorporate by reference all the allegations contained in the  
15 Complaint as though fully set forth herein.

16 117. Agreements were entered into between Defendants and Plaintiffs for  
17 treasury services on behalf of Plaintiffs.

18 118. Plaintiffs fully performed all conditions, covenants, and promises  
19 required of them under the Agreements.

20 119. Pursuant to the Agreements, Defendants agreed to process  
21 contributions and other income to Plaintiffs, process legitimate expense requests  
22 from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss  
23 detail and account summaries for each of Plaintiffs' accounts on a regular basis.  
24 In return, Plaintiffs paid Defendants for their work.

25 120. In violation of their promises and obligations under the Agreements,  
26 Defendants, and each of them, breached their obligations to Plaintiffs by, among  
27 other things, making unauthorized withdrawals from the Accounts for their own  
28

1 benefit; converting Plaintiffs' funds for their own use; and failing to provide  
2 accurate account summaries and profit and loss statement.

3 121. As a direct and legal result of Defendants' breach, Plaintiffs, and each  
4 of them, have been damaged in the amount exceeding the jurisdictional minimum,  
5 according to proof.

6 122. WHEREFORE, Plaintiffs pray for judgment against Defendants, and  
7 each of them, as set forth herein.

8 **FOURTH CAUSE OF ACTION**  
9 **BREACH OF THE IMPLIED COVENANT OF**  
10 **GOOD FAITH AND FAIR DEALING**  
11 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**  
12 **and DOES 1-5)**

13 123. Plaintiffs incorporate by reference all the allegations contained in the  
14 Complaint as though fully set forth herein.

15 124. As alleged herein, agreements were entered into between Defendants  
16 and Plaintiffs for treasury services on behalf of Plaintiffs.

17 125. Plaintiffs fully performed all conditions, covenants, and promises  
18 required of them under the Agreements.

19 126. Pursuant to the Agreements, Defendants agreed to process  
20 contributions and other income to Plaintiffs, process legitimate expense requests  
21 from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss  
22 detail and account summaries for each of Plaintiffs' accounts on a regular basis.  
23 In return, Plaintiffs paid Defendants for their services.

24 127. Implied in the Agreements was a covenant by Defendants that they  
25 would act in good faith and deal fairly with Plaintiffs, and each of them, and  
26 would not do anything to deprive Plaintiffs, and each of them, of the benefits of  
27 the Agreements.

28



128. In violation of the implied covenant of good faith and fair dealing, Defendants, and each of them, made unauthorized withdrawals from the Accounts for their own benefit; converted Plaintiffs' funds for their own use; and failed to provide accurate account summaries and profit and loss statement.

129. As a direct and legal result of Defendants' breach, Plaintiffs, and each of them, have been damaged in the amount exceeding the jurisdictional minimum, according to proof.

130. WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein.

### **FIFTH CAUSE OF ACTION**

#### **AIDING AND ABETTING FRAUD**

**(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

131. Plaintiffs reallege and incorporate all the paragraphs of the Complaint, as though fully set forth hereafter.

132. Defendants DURKEE, D&A, FORGY, LEMCKE, and DOES 5-10, as discussed above, made material misrepresentations and omissions to Plaintiffs regarding the status of the funds in accounts held at First California Bank and City National Bank.

133. As set forth in the Complaint, First California Bank had **actual knowledge** of the fraud being perpetrated on Plaintiffs by DURKEE and her associates.

134. As set forth in this Complaint, First California Bank **substantially assisted** DURKEE and her associates in perpetrating their fraud upon Plaintiffs. Specifically, First California Bank assisted in the fraudulent scheme in several ways including but not limited to the following.

- a. Opening accounts for DURKEE and D&A and allowing them to deposit Plaintiffs' monies via suspicious wire transfers;

- 1           b.     Permitting DURKEE and D&A to commingle Plaintiffs’  
2               monies in the accounts of other of Defendants’ clients;  
3           c.     Allowing DURKEE and D&A to transfer large sums of  
4               Plaintiffs’ monies via suspicious wire transfers and checks to  
5               D&A accounts;  
6           d.     Allowing DURKEE and D&A to misappropriate large sums of  
7               Plaintiffs’ monies to pay for hundreds of thousands of dollars  
8               in personal and business expenses.

9           135. Without First California Bank’s substantial assistance, DURKEE and  
10          her associates would not have been able to defraud Plaintiffs.

11          136. As a result of DURKEE and D&A’s fraud, and First California  
12          Bank’s assistance thereof, Plaintiffs suffered economic losses in an amount to be  
13          proven at trial.

14          137. The wrongful acts of First California Bank were done maliciously,  
15          oppressively, and with intent to defraud, and Plaintiffs and Class members are  
16          entitled to punitive and exemplary damages in an amount to be ascertained  
17          according to proof.

18          138. WHEREFORE, Plaintiffs pray for relief as set forth below.

19                               **SIXTH CAUSE OF ACTION**

20                               **AIDING AND ABETTING CONVERSION**

21                   **(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

22          139. Plaintiffs incorporate by reference all the allegations contained in the  
23          Complaint as though fully set forth herein.

24          140. At all times alleged, Plaintiffs were the owners of the funds  
25          maintained in the subject accounts, or had the right to possession of the funds that  
26          were maintained in the accounts.

27          141. At all times alleged, Defendants DURKEE, D&A, FORGY,  
28          LEMCKE, and DOES 1-5, and each of them, wrongly drew on Plaintiffs’ funds

1 without authorization and without permission for their own personal and wrongful  
2 use. Defendants, and each of them, were direct beneficiaries of the conversion as  
3 they obtained financial benefits including, but not limited to, the payment of  
4 personal and business debts and liabilities.

5 142. As set forth in this Complaint, First California Bank had actual  
6 knowledge of the wrongful conversion of Plaintiffs' funds by DURKEE and her  
7 associates.

8 143. As set forth in the complaint, First California Bank substantially  
9 assisted DURKEE and her associates in wrongfully converting Plaintiffs' funds.  
10 Specifically, First California Bank assisted in the conversion in several ways  
11 including but not limited to the following.

- 12 a. Opening accounts for DURKEE and D&A and allowing them  
13 to deposit Plaintiffs' monies via suspicious wire transfers;
- 14 b. Permitting DURKEE and D&A to commingle Plaintiffs'  
15 monies in the accounts of other of Defendants' clients;
- 16 c. Allowing DURKEE and D&A to transfer large sums of  
17 Plaintiffs' monies via suspicious wire transfers and checks to  
18 D&A accounts;
- 19 d. Allowing DURKEE and D&A to misappropriate large sums of  
20 Plaintiffs' monies to pay for hundreds of thousands of dollars  
21 in personal and business expenses.

22 144. Without First California Bank's substantial assistance, DURKEE and  
23 her associates would not have been able to convert Plaintiffs' funds.

24 145. As a result of DURKEE and D&A's conversion, and First California  
25 Bank's assistance thereof, Plaintiffs suffered economic losses in an amount to be  
26 proven at trial.

27 146. The wrongful acts of First California Bank were done maliciously,  
28 oppressively, and with intent to defraud, and Plaintiffs and Class members are

1 entitled to punitive and exemplary damages in an amount to be ascertained  
2 according to proof.

3 147. As a legal result of the conversion by Defendants, and First California  
4 Bank's assistance thereof, Plaintiffs, and each of them, suffered damages  
5 including, but not limited to, the amount of money converted, as well as the time  
6 and money expended to recovery said wrongfully converted funds including, but  
7 not limited to, attorneys' fees and costs.

8 148. Punitive damages should also be awarded pursuant to Civil Code  
9 section 3294 as the conduct of Defendants, and each of them, was malicious,  
10 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

11 149. WHEREFORE, the Plaintiffs, and each of them, pray for judgment  
12 against Defendants, as set forth herein.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.***

15 **UNLAWFUL, FRAUDULENT, AND UNFAIR BUSINESS**

16 **ACTS AND PRACTICES**

17 **(As Against All Defendants)**

18 150. Plaintiffs incorporate by reference the allegations contained in all  
19 prior paragraphs of this Complaint as though fully set forth herein.

20 151. By their wrongful conduct, as set forth above, Defendants, and each  
21 of them, engaged in unfair, unlawful, and/or fraudulent acts in violation of §  
22 17200 *et seq.* of the California Business and Professions Code.

23 152. Defendants' practices were unlawful, unfair, and/or fraudulent  
24 business practices for the reasons set forth below, without limitation:

- 25 (a) Defendants' acts and practices constitute fraud and deceit;  
26 (b) Defendants' acts and practices were unfair in that they offend  
27 public policy as expressed in statutes and regulations, and are  
28 unscrupulous;

1 (c) Defendants' practices caused injury to Plaintiffs; and

2 (d) Defendants' practices were unlawful.

3 153. Plaintiffs seek restitution from Defendants, and each of them, as a  
4 result of their unfair, unlawful, and/or deceptive business acts or practices.

5 154. WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **EIGHTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 **(As Against FIRST CALIFORNIA BANK and DOES 5-10)**

9 155. Plaintiffs incorporate by reference all the allegations contained in the  
10 Complaint as though fully set forth herein.

11 156. An actual controversy has arisen and now exists relating to the rights  
12 and duties of the parties herein in that Plaintiffs contend that they are the rightful  
13 owners of, and are entitled to immediate access to, funds held various accounts of  
14 First California Bank; whereas First California Bank has refused to provide  
15 Plaintiffs with access to their accounts, complete information regarding Plaintiffs'  
16 accounts, the funds held in those accounts, or Plaintiffs' funds that have been  
17 wrongfully transferred into other accounts maintained at First California Bank.

18 157. Plaintiffs desire a judicial determination of their rights and duties, and  
19 a declaration as to:

20 (a) Whether the funds currently existing in Plaintiffs' accounts are the  
21 rightful property of Plaintiffs;

22 (b) Whether First California Bank should provide Plaintiffs with  
23 access to their accounts;

24 (c) Whether First California Bank should immediately distribute to  
25 Plaintiffs the balance of their accounts;

26 (d) Whether First California Bank is obligated to provide Plaintiffs  
27 with complete information regarding Plaintiffs' accounts, including all bank  
28 statements and cancelled checks from the past five years; and

1 (e) Whether First California Bank should provide Plaintiffs with all  
2 funds wrongfully transferred from Plaintiffs' accounts to other accounts currently  
3 maintained at First California Bank.

4 158. WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **PRAYER FOR RELIEF**

6 **Plaintiffs pray for a judgment:**

- 7 1. For compensatory damages, according to proof;
- 8 2. Punitive and exemplary damages, according to proof;
- 9 3. For a preliminary and permanent injunction against Defendants  
10 restraining, preventing and enjoining them and their unnamed co-  
11 conspirators and all those acting in concern with them, from engaging  
12 in the unlawful, unfair, and/or fraudulent actions alleged in this  
13 complaint;
- 14 4. For a preliminary and permanent injunction against Defendants  
15 restraining, preventing and enjoining them and their unnamed co-  
16 conspirators and all those acting in concern with them, from  
17 withdrawing, transferring, or otherwise accessing any funds contained  
18 in any of the following accounts:
- 19 5. For restitution of all monies that were unlawfully, unfairly, and/or  
20 fraudulently obtained from Plaintiffs or in equity and good  
21 conscience Defendants should pay to Plaintiffs pursuant to *Korea*  
22 *Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134 (2003).
- 23 6. For pre-judgment and post-judgment interest at the legal rate;
- 24 7. Declaring that the funds currently existing in Plaintiffs' accounts are  
25 the rightful property of Plaintiffs;
- 26 8. Requiring First California Bank should provide Plaintiffs with access  
27 to their accounts;

- 1           9.     Requiring First California Bank to provide Plaintiffs with a complete  
2           accounting of all funds currently maintained in Plaintiffs' accounts,  
3           and an accounting of all funds transferred from Plaintiffs' account to  
4           any other accounts held by First California Bank over the course of  
5           the last five years;  
6           10.    Requiring First California Bank to immediately distribute to Plaintiffs  
7           the balance of their accounts;  
8           11.    Requiring First California Bank to provide Plaintiffs with complete  
9           information regarding Plaintiffs' accounts, including all bank  
10          statements and cancelled checks from the past five years;  
11          12.    Declaring that all funds transferred from Plaintiffs' account to any  
12          other accounts held by First California Bank remain the rightful  
13          property of Plaintiffs;  
14          13.    Requiring First California Bank to provide Plaintiffs with all funds  
15          wrongfully transferred from Plaintiffs' accounts to other accounts  
16          currently maintained at First California Bank; and  
17          14.    For such other and further relief s the Court may deem just and  
18          proper.

19  
20       DATED: Sept 22, 2011

COTCHETT, PITRE & McCARTHY, LLP

21  
22       By: 

23       JOSEPH W. COTCHETT  
24       Attorneys for Plaintiff  
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JURY DEMAND

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED: Sept 22, 2011

COTCHETT, PITRE & MCCARTHY, LLP

By:



JOSEPH W. COTCHETT  
*Attorneys for Plaintiff*